

U.S. Patent Application No. 10/519,156  
Amendment dated April 5, 2007  
Response to Office Action dated December 13, 2006

### **REMARKS/ARGUMENTS**

Reconsideration and continued examination of the above-identified application are respectfully requested.

In the amendment, claim 1 has been amended to recite that the hard-shelled fruit is a hazelnut. Claims 2, 10, and 11 have been canceled as a result of this amendment. Full support for the amendment can be found, for instance, at page 2 of the present application. Accordingly, no questions of new matter should arise and entry of this amendment is respectfully requested.

At page 2 of the Office Action, the Examiner does indicate that the objections to the claims set forth in the previous Office Action have been withdrawn.

### **Rejection of Claims 1-5, 7, and 9-11 under 35 U.S.C. §102(b) – Matsunaga**

At page 2 of the Office Action, the Examiner rejects claims 1-5, 7, and 9-11 under 35 U.S.C. §102(b) as being anticipated by Matsunaga (U.S. Patent No. 3,901,983). The Examiner is essentially relying on the same arguments as set forth in the previous Office Action dated March 9, 2006. With respect to claim 11, the Examiner argues that Matsunaga shows peanut flour. Further, the Examiner asserts that the peanut flour in Matsunaga can be used in drinks and milk, and since peanuts have a pale white to medium brownish color, this would act as a coloring of the product. This rejection is respectfully traversed.

The applicants believe that the Examiner has overlooked the applicants' previous remarks regarding Matsunaga. In particular, Matsunaga relates to the peanut itself and not the by-product of the peanut.

As pointed out, Matsunaga relates to shelled and skinned peanuts that are treated to remove tannin and odor associated with peanuts (see Abstract). The thin skins (membranes) as well as any

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dye components are removed and discarded in order to obtain de-fatted peanut flour and peanut oil (see Abstract). Therefore, Matsunaga does not teach or suggest a dry extract obtained from roasted by-products of hard-shelled fruit and processing, whereby the by-products are membranes and/or fruit residues of hard-shelled fruits, pulses, or mixtures thereof, as claimed in the present invention. In fact, Matsunaga teaches away from using any of the by-products and certainly does not teach or suggest using the by-products in a dry extract for dyeing or coloring. At col. 2, lines 8-14, Matsunaga teaches removing odor, tannin, and impurities in order to facilitate extraction of oil and to produce powder that does not deteriorate. Therefore, Matsunaga teaches away from using or producing a dry extract that is obtained from roasted by-products of hard-shelled fruits and pulse processing, as claimed.

Further, Matsunaga, as indicated above, only relates to peanuts and not hazelnuts, and for this additional reason, Matsunaga does not teach or even suggest the claimed invention.

Accordingly, this rejection should be withdrawn.

**Rejection of Claims 1-5 and 7-10 Under 35 U.S.C. §102(e) -- Khatchatrian et al.**

At page 3 of the Office Action, the Examiner rejects claims 1-5 and 7-10 under 35 U.S.C. §102(e) as being anticipated by Khatchatrian et al. (WO 01/53418). The Examiner essentially relies on the same arguments as set forth in the previous Office Action. The Examiner does assert that the dried walnut rinds would encompass roasting, since roasting includes drying.

With respect to this rejection, at page 10 of the Office Action, the Examiner indicates that the Declaration under 37 C.F.R. §1.131 is not persuasive because only one inventor signed it and all inventors should sign the Declaration. This rejection is respectfully traversed.

Khatchatrian et al. relates to walnut rinds and not hazelnuts, as now claimed in the present

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invention.

Further, to address the Examiner's request that each inventor sign the Declaration under 37 C.F.R. §1.131, attached is a Declaration where each inventor has signed the Declaration.

As recognized by the Examiner, due to the rejection being under 35 U.S.C. §102(e), the publication date of Khatchatrian et al. is July 26, 2001, and Khatchatrian et al. was based on a earlier U.S. patent application filed January 18, 2000. No earlier U.S. filing date is claimed. On the other hand, the present application is a national phase entry of an International application filed June 18, 2003, which, in turn, claims the benefit of a German application filed June 18, 2002. In addition, attached to this amendment is a Declaration Under 37 C.F.R. §1.131 signed by the inventors, which states that the present application, as claimed, was conceived and reduced to practice prior to January 18, 2000. Attached to the Declaration is supporting documentation, which is a research report that details one of the experiments. The Declaration and supporting documentation support the claims as pending. In view of this Declaration, Khatchatrian et al. would not be prior art to the claimed invention.

For these reasons, this rejection should be withdrawn.

**Rejection of Claims 1-5 and 9-11 under 35 U.S.C. §102(b) -- Rabinowitz**

At page 5 of the Office Action, the Examiner rejects claims 1-5 and 9-11 under 35 U.S.C. §102(b) as being anticipated by Rabinowitz (U.S. Patent No. 5,160,756). This is a new rejection by the Examiner. The Examiner asserts that Rabinowitz shows the extraction of products from almond fruit by using the almond hull. The Examiner further indicates that Rabinowitz shows the use of this extract for animal feed, dietary fibers, and sweeteners. This rejection is respectfully traversed.

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Rabinowitz only relates to the use of almond hulls and subjects them to a water extraction and, ultimately, mashes the hull and dries the hull to make a product. Since the present invention, as claimed, relates to hazelnuts only, Rabinowitz would not teach the claimed invention. Accordingly, this rejection should be withdrawn.

**Rejection of Claims 6-8 under 35 U.S.C. §103(a) -- Rabinowitz in view of Nafisi-Movaghar et al.**

At page 6 of the Office Action, the Examiner issues a new rejection, which rejects claims 6-8 under 35 U.S.C. §103(a) as being unpatentable over Rabinowitz in view of Nafisi-Movaghar et al. (U.S. Patent No. 5,912,363). The Examiner essentially relies on Rabinowitz as set forth above in the earlier rejection. The Examiner then asserts that the Nafisi-Movaghar et al. reference shows extraction of proanthocyanidins from almond hulls or walnut hulls or grape seeds. The Examiner further asserts that the reference shows the drying of this extracted material and further asserts that it can be used to color a food product, referring to Example 4, as well as col. 10, lines 30-35, which refers to an article discussing the use of anthocyanins as food colors. This rejection is respectfully traversed.

Proanthocyanidins are not anthocyanins. Proanthocyanidins, through acid hydrolysis, yields anthocyanins, as explained at col. 1 of Nafisi-Movaghar et al. It appears that the Examiner's position is that since this reference shows the formation of proanthocyanidins, which can form anthocyanins upon hydrolysis, this would be a form of stabilizing, as set forth in claim 6 of the present application.

Claim 6 is clearly not directed to the provision of anthocyanins and/or anthocyanidins per se. Nafisi-Movaghar et al. merely describes a process for the extraction of proanthocyanidins from

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plants. However, the use of the proanthocyanidins as a coloring agent or the use of proanthocyanidins for stabilizing anthocyanins and/or anthocyanidins are not described. One skilled in the art would not combine such a teaching with Rabinowitz, which is quite different from Nafisi-Movaghar et al.

Furthermore, as indicated above, Rabinowitz does not relate to hazelnuts, but only relates to the use of almond hulls.

Also, claim 6 recites a method of stabilizing anthocyanidins and/or anthocyanins by adding the dry extract of claim 1. Therefore, claim 6 requires the presence of anthocyanins and/or anthocyanidins and also the presence of the dried extract of claim 1. This reference only shows the plant material to obtain proanthocyanidins, but does not teach or suggest adding plant material to stabilize anthocyanins or anthocyanidins. Thus, the Examiner has not provided a reasonable rejection of claim 6.

Accordingly, this rejection should be withdrawn.

**Rejection of Claims 1, 2, 10, and 11 under 35 U.S.C. §103(a) – Ivie in view of Matsunaga**

At page 7 of the Office Action, the Examiner then rejects claims 1, 2, 10, and 11 under 35 U.S.C. §103(a) as being unpatentable over Ivie (U.S. Patent No. 5,219,818) in view of Matsunaga. The Examiner asserts that Ivie shows a method of processing peanut hulls by forming dust-free granules, which can then be used as chemical carriers and moisture absorbents. The Examiner essentially relies on Matsunaga in the same manner as mentioned earlier. It appears, based on the rejection, that the Examiner is asserting that Ivie does not show roasted nut by-products, but Matsunaga shows the drying of a peanut product by parching, thereby rendering claims 1, 2, 10, and 11 obvious. This rejection is respectfully traversed.

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In response, one skilled in the art would not combine Ivie with Matsunaga because Ivie specifically relates to peanut hulls and processing peanut hulls, while Matsunaga specifically relates to the peanut itself and not the shell or skin. In other words, Matsunaga relates to the edible portion of the nut, while Ivie relates to the non-edible portion of the nut and, therefore, the two references are completely different from each other with respect to the part of the peanut being processed. Therefore, one skilled in the art clearly would not combine these teachings.

In addition, as indicated above, both Ivie and Matsunaga focus on peanuts and not hazelnuts, and for these reasons, this rejection should be withdrawn.

**Rejection of Claims 1-5 and 9-11 under 35 U.S.C. §103(a) -- Ivie and Matsunaga in view of Lenoble et al.**

At page 8 of the Office Action, the Examiner then rejects claims 1-5 and 9-11 under 35 U.S.C. §103(a) as being unpatentable over Ivie and Matsunaga and further in view of Lenoble et al. (U.S. Patent No. 5,908,650). The Examiner is relying on Ivie and Matsunaga as before. The Examiner further asserts that Lenoble et al. shows the water extracts of peanut hulls acting as co-pigments and pigment-stabilizing agents for food. This rejection is respectfully traversed.

For the reasons set forth above in the earlier rejection involving Matsunaga alone and Matsunaga in view of Ivie, this rejection should be withdrawn since Lenoble et al. does not overcome any of the deficiencies set forth above.

Furthermore, Lenoble et al. only mentions peanuts for improving anthocyanin pigment compositions and does not teach or suggest dry extracts obtained from hazelnuts. Furthermore, peanut hulls are only mentioned as one possibility within a large variety of possible agents for stabilizing pigments and there is no guidance that peanut hulls may be preferred in any way.

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Further, it is not obvious from Lenoble et al. or any of the references cited by the Examiner to use hazelnuts instead of peanuts in the preparation of improved pigment compositions.

For these reasons, this rejection should be withdrawn.

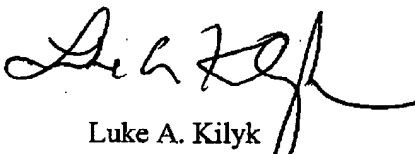
The Examiner is encouraged to contact the undersigned should there be any remaining questions with respect to the patentability of the claimed subject matter over the cited references.

### CONCLUSION

In view of the foregoing remarks, the applicant respectfully requests the reconsideration of this application and the timely allowance of the pending claims.

If there are any fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,



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Attachment: Declaration Under 37 C.F.R. §1.131 (9 pages)